

REMARKS

These remarks, and the above amendments, are responsive to the Office action dated May 6, 2004. Claims 1-52 are pending in the application. In the Office action, the Examiner allowed claim 52. Claims 5-22, 25, 32 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1-4, 23, 24, 26-31, 33-44 and 46-51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,248,042 to Kuhmonen ("Kuhmonen") in view of GB Patent Application No. 2,200,613 to Jenkins et al. ("Jenkins").

Amendments to claims 1 and 23 are to correct typographical errors only. In view of the above amendments and the remarks below, applicant respectfully requests reconsideration of the application under 37 C.F.R. § 1.111 and allowance of the pending claims.

Rejections under 35 USC § 103

Applicant respectfully traverses rejection of claims 1-4, 23, 24, 26-31, 33-44 and 46-51 under 35 U.S.C. § 103(a) as being unpatentable over Kuhmonen in view of Jenkins.

To establish a *prima facie* case of obviousness, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). The teaching or suggestion to make the claimed combination, as well as showing a reasonable expectation of success, "must be found in the prior art, not in the

applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1988).

Firstly, applicant submits that Jenkins is non-analogous art when compared with trommel equipment, especially a portable trommel. Secondly, Kuhmonen and Jenkins do not suggest or teach all of the elements of claim 1. And thirdly, Applicant submits that the Examiner's showing of a suggestion to combine Jenkins has been impermissibly derived from Applicant's disclosure.

Jenkins is Non-analogous Art

As stated by the Federal Circuit in the two leading cases on analogous art rejections: "In order to rely on a reference as a basis for rejection..., the reference must either be in the field of applicant's endeavor, or if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

Thus, the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve. *Id.* If a reference's disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection. *Id.* If an invention is directed to a different purpose, the inventor would have had less motivation to

consider it. *Id.*

As explained in the specification of the present reissue application, trommel equipment has been used in sorting or filtering material by size in industries including construction, waste disposal, landscaping, and building demolition. In Kuhmonen, use of trommel equipment is further referred to for processing yard waste, wet mulch, and mixtures of soil, rock, stumps, brush and vegetation, cleared from raw land subject to development, (col. 1, ll. 9 – 13), and for recycling efforts, processing of municipal garbage, solid waste, and raw product of automobile shredding operations. (col. 1, ll. 17-23).

It is not believed that the Examiner is taking the position that Jenkins' machine is within the inventor's field of endeavor. Indeed, Jenkins is not a trommel at all. A trommel for filtering raw materials described above is in a very different field than that of a telescoping boom conveyor for loading and unloading trucks with (usually finished) goods or manufactured items that have been pre-packaged for easy conveyance to, and stacking within, a truck. Therefore, it must be decided whether Jenkins is reasonably pertinent to the problem the inventor attempts to solve.

As described in the specification, a major disadvantage of current trommel equipment is its lack of portability from one location to another, requiring extended time and cost to brake down a stockpile conveyor, consisting of a separate piece from the trommel, in order to transport the trommel. Yet a further problem includes requiring a tractor for removing stockpiles that are limited in

height from beneath the conveyor, which is not conveniently moveable itself. The stated purpose of the invention is to provide for both a rejected material conveyor and a stock piling conveyor that each has lower and upper portions that can be folded next to and/or over the trommel chassis so that the entire trommel can be transported from one location to another without damaging the conveyors.

While both Jenkins' cantilever conveyor section 6 and applicant's stockpiling or discharge conveyor all are designed, in the abstract, to move "things," their respective construction is quite dissimilar. Solving the above problem means that applicant's brackets, support structures, holding chain, hydraulics, and all the pivoting joints and parts are designed to be able to handle travel over uneven surfaces, and withstand abuse of transportation. It also meant creative design that required folding the conveyors next to and/or over the trommel to minimize the trommel's profile for transportation on typical roads.

The design of Jenkins' machine for loading and unloading trucks at a warehouse do not have any concern with any of the aforementioned problems. Jenkins' conveyor having a *single, unitary cantilevered* section (see pp. 26-27, *infra*) is not portable and does not suggest that its parts or design could possibly withstand the abuse and wear of travel over ground surfaces, many uneven. Also, this cantilevered section does not fold over the chassis, but sticks up at a substantially vertical position (p. 1, 5th paragraph). Furthermore, there is no discussion of being able to move or filter raw waste, disposal, landscaping, or building demolition materials, which are easily distinguished from the usual

finished products leaving a warehouse or factory. There is no evidence of which applicant is aware that suggests Jenkins' efforts are reasonably pertinent to the problems the present invention attempted to solve, and applicant therefore respectfully requests that Jenkins be excluded as prior art to this application.

References Fail to Teach All Claim Limitations

Secondly, in the event that Jenkins is found to be analogous, Kuhmonen and Jenkins do not suggest or teach all of the elements of claim 1. Claim 1 recites a portable trommel with a stockpiling conveyor having a first lower part pivotally attached to the chassis and a first upper part, which is pivotally attached to the first lower part, the first lower and the first upper parts being movable between an extended, operational position, in which the stockpiling conveyor extends upwardly and outwardly from the chassis and a retracted position for transportation, in which the first lower part is at an angle to the first upper part and the first upper part extends over the chassis.

The Kuhmonen reference is concerned with a particular aspect of trommel construction, namely controlling the flow into the drum intended to prevent clogging of the screen. To this end, a set of wires is circumferentially wrapped about a bar cage, with sufficient flexibility to permit the wires to locally elastically flex away from the bars, to permit slightly oversized material to pass through, thereby facilitating cleaning of debris. This is intended to prevent clogging as compared to conventional structures.

What is striking in the Kuhmonen reference is that many other aspects of

the trommel design are treated in a cursory manner. Thus, the so-called discharged conveyor 26 is mentioned only briefly in a number of places, and no significant details are given. FIG. 1 appears to show some sort of support towards the top part of the conveyor 26, but this element is not given any reference numeral, and there is no specific explanation as to its function.

More importantly, the conveyor 26 is shown as a single, solid or integral unit. There is no suggestion or teaching that the conveyor 26 be in two parts. Moreover, there is absolutely no discussion or hint that the conveyor 26 be moved between different positions for operation and for transportation. Therefore, Kuhmonen does not teach or suggest all of the elements of claim 1.

Jenkins also does not disclose a stockpiling conveyor having a first lower part pivotally attached to the chassis and a first upper part, which is pivotally attached to the first lower part, the first lower and the first upper parts being movable between an extended, operational position, in which the stockpiling conveyor extends upwardly and outwardly from the chassis and a retracted position for transportation, in which the first lower part is at an angle to the first upper part and the first upper part extends over the chassis. Jenkins discloses a telescoping boom conveyor system for use in loading and unloading cargo onto and off of trucks from a warehouse entrance, not a conveyor that can be folded or pivoted in the manner taught in claim 1 so as to provide a compact structure for transportation.

Specifically, Jenkins teaches a cantilevered conveyor section 6 of a main

conveyor 1 that is pivotal about a horizontal axis 7 to a substantially vertical position 10 (p. 1, 3rd and 4th paragraphs, p. 3, 2nd paragraph.) Hydraulic ram 8 is used to lift cantilevered conveyor section 6, which extends "approximately 90° to the length thereof" (p. 1, last paragraph). Jenkins does not disclose a first lower part pivotally attached to the chassis and a first upper part, which is pivotally attached to the first lower part, or that such first lower part is at an angle to the first upper part, and the first upper part that extends over the chassis.

There is an absolute absence of discussion in Jenkins as to adapting such a conveyor system for transportation from one location to another. In fact, adapting Kuhmonen's trommel with Jenkins' cantilevered conveyor section 6 in place of conveyor 26 would imply only a 90° vertically disposed conveyor 26, which while remaining an integral conveyor section, would render the trommel not at all portable. The trommel's profile with protruding conveyor section 26 would not clear tunnels, bridges, and other structures, such as electrical lines, that have a height limit. There is also no suggestion that the structural parts of a cantilevered conveyor section 6 could withstand excessive loads or normal shocks inherent in travel over uneven roads. Indeed, the fact that Jenkins teaches use of a conveyor in a stationary warehouse suggests the opposite. Therefore, no combination of Kuhmonen and Jenkins discloses or suggests all the elements of claim 1.

Suggestion Derived from Applicant's Disclosure

Thirdly, because Jenkins does not disclose a first lower part pivotally

attached to the chassis and a first upper part, which is pivotally attached to the first lower part, the first lower and first upper part being movable between an extended operational position, in which the stockpiling conveyor extends upwardly and outwardly from the chassis and a retracted position in which the first lower part is at an angle to the first upper part and the first upper part extends over the chassis, there is an indication that the attempt to show a *prima facie* case of obviousness of claim 1 over Jenkins involved suggestions impermissibly derived from applicant's own disclosure.

The structure cited by the Examiner, specifically "near 1, 8 before pivot point," as a lower part that is pivotally attached to the chassis, does not hold true upon closer consideration of Jenkins. Conveyor 1 and cam 8 in fact constitute the main conveyor, which both remain parallel to the ground, and are comparable to a trommel chassis. Jenkins recites that "[t]he ram 8 is *fixed* in position relative to the conveyor 1 by its cylinder and the ram is operatively engaged with the lever 9 through a roller. . . .," (p. 2, last paragraph), which reemphasizes this point. The most that could be said about ram 8 is that it is part of the pivot joint, clearly not a conveyor section. The only conclusion, therefore, is that Jenkins involves a single, integral cantilevered conveyor section, and is wholly void of a first upper part that extends at an angle to a first lower part or that extends over the chassis. Thus, any attempt to show a *prima facie* case of obviousness of claim 1 in view of Jenkins impermissibly derives the suggestion for the combination of claim elements from applicant's disclosure.

Conclusion

For at least these reasons, claim 1 is not obvious over Kuhmonen in view of Jenkins, and is in condition for allowance. Furthermore, claims 2-22 depend from claim 1 and include all the elements of claim 1, and are therefore not obvious over Kuhmonen in view of Jenkins, and are thus also in condition for allowance.

Remainder of Claims

Claim 23 recites, *inter alia*, a stockpiling conveyor mounted on the chassis and having a lower end for receiving screened material from the output means and having an upper end for discharging screened material to form a stockpile, wherein the stockpiling conveyor is movable between an extended, operational position extending upwardly and outwardly from the chassis, and a retracted position for transportation, the stockpiling conveyor not extending substantially beyond the chassis in its retracted position.

Applicant respectfully traverses rejection of claim 23 as Kuhmonen and Jenkins fail to teach or suggest all its elements. Kuhmonen fails to suggest or teach that conveyor 26 has upper and lower ends that fold close enough to the chassis so as not to extend substantially beyond the chassis in a retracted position.

Jenkins also does not disclose a conveyor having a upper and lower ends that fold close so as not to extend substantially beyond the chassis in its retracted position. Jenkins discloses a telescoping boom conveyor that employs

a single, integral cantilever conveyor section 6 for use in a stationary warehouse, not a portable trommel. In its full retracted position, cantilever conveyor section 6 is substantially vertical relative to the main conveyor 1, which itself does not pivot. There is no further suggestion to fold cantilever end 6 so that the profile in the retracted position does not extend "substantially beyond the chassis," as required by claim 23. Therefore, no combination of Kuhmonen and Jenkins discloses or suggests all the elements of claim 23. For at least this reason, claim 23 is not obvious over Kuhmonen in view of Jenkins, and is in condition for allowance. Claims 24-25 depend from claim 23 and include all the elements of claim 23, and are therefore not obvious over Kuhmonen in view of Jenkins, and are thus also in condition for allowance.

Claim 26 recites, *inter alia*, a frame assembly supported for travel over a ground surface and a deployable elongate material distribution conveyor mounted thereon, adjacent the trommel's output end, being movable relative to the frame assembly about two angularly displaced axes, and having a first and a second component, the first component operatively interposed between the second component and the frame assembly, where the first component and second component move relative to each other during adjustment of the conveyor between deployed and stowed conditions, and where adjustment of the conveyor toward its stowed condition tends to minimize its gravitational projection and adjustment toward its deployed condition tends to enlarge its gravitational projection.

Applicant respectfully traverses rejection of claim 26 as Kuhmonen and Jenkins fail to teach or suggest all its elements. Kuhmonen fails to suggest or teach that conveyor 26 can be made of two components moveable relative to the frame assembly about two angularly displaced axes, that also move relative to each other during adjustment between deployed and stowed conditions, and also fails to disclose a minimization of gravitational projection in its stowed condition or an enlargement of gravitational projection in a deployed position. Kuhmonen discloses only a single, integral conveyor 26 that is not ever "stowed" or pivoted in a horizontal direction, thus retaining a substantially equal gravitational projection at all times.

Jenkins likewise does not teach or suggest a frame assembly supported for travel over a ground surface or a conveyor made of two components, moveable relative to the frame assembly about two angularly displaced axes and moveable relative to each other during adjustment between deployed and stowed conditions. Jenkins discloses a single telescoping boom conveyor that employs a unitary, integral cantilever conveyor section 6. It is adapted for use in a stationary warehouse and its cantilever action is disclosed only for the ability of storing the conveyor inside a warehouse. There is no discussion of adaptation for making the conveyor of two components, moveable relative to the frame assembly and relative to each other during adjustment between deployed and stowed conditions so that the frame assembly itself would be portable over ground surfaces. Therefore, no combination of Kuhmonen and Jenkins discloses

or suggests all the elements of claim 26. For at least this reason, claim 26 is not obvious over Kuhmonen in view of Jenkins, and is in condition for allowance. Furthermore, claims 27-34 depend from claim 26 and include all the elements of claim 26, and are therefore not obvious over Kuhmonen in view of Jenkins, and are thus also in condition for allowance.

Claim 35 is similar to claim 26 but recites that adjustment of the conveyor toward its stowed condition tends to minimize its linear extension and adjustment toward its deployed condition tends to enlarge its linear extension.

Applicant respectfully traverses rejection of claim 35 as Kuhmonen and Jenkins fail to teach all of its elements. It is clear that conveyor 26 of Kuhmonen retains the same linear extension at least because it does not fold into two pieces. Without teaching at least that conveyor 26 consists of two components that move relative to each other, also required by claim 35, it would be difficult to imagine any change in its linear extension. Furthermore, Kuhmonen does not teach that conveyor 26 is stowed or deployed at all, but only that it may pivot in a horizontal direction.

Jenkins also does not disclose a two-component conveyor that tends to minimize its linear extension in a stowed condition and that tends to enlarge its linear extension in the deployed condition. Jenkins discloses a cantilever conveyor section 6 that pivots in the vertical direction only, and failing to disclose that it folds into two components that are moveable about two angularly displaced axes, as required by claim 35, renders its linear extension substantially

equal throughout its pivoting. Furthermore, as claim 35 does not require a telescoping action of the conveyor, the cantilever conveyor section 6 of Jenkins is analyzed from the perspective of FIGS. 2-3, where no telescoping action of the boom is shown. This further emphasizes that, whether deployed or stowed, cantilever conveyor section 6 retains the same linear extension. Therefore, no combination of Kuhmonen and Jenkins discloses or suggests all the elements of claim 35. For at least this reason, claim 35 is not obvious over Kuhmonen in view of Jenkins, and is in condition for allowance.

Claim 36 recites, *inter alia*, a chassis supported for travel over a ground surface and a deployable conveyor having at least a pair of relatively moveable elongate components mounted on the chassis adjacent the output end of the trommel movable relative to the chassis about angularly displaced first and second axes, where the first and second axes intersect.

Applicant respectfully traverses claim 36 as Kuhmonen and Jenkins fail to teach all of its claim limitations. Kuhmonen does not teach or suggest a conveyor that has two relatively moveable sections, or that both sections move relative to the chassis about angularly displaced first and second axes.

Kuhmonen further fails to teach that these sections are moveable in support of a chassis that is supported for travel over a ground surface. Kuhmonen teaches a single, integral conveyor 26 that, at most, has some pivoting, but only about a single (vertical) axis.

Jenkins also does not disclose a conveyor that has two relatively moveable

sections, or that both sections move relative to the chassis about angularly displaced first and second axes. Jenkins teaches a single, cantilever conveyor section 6 that pivots as one piece to, at the most, a substantially vertical 90° position. But again, the pivoting is about a single axis. Also, in teaching use of a cantilever conveyor section 6 as part of telescoping boom conveyor for loading and unloading trucks at a warehouse entrance, Jenkins actually suggests against adapting the conveyor for use on a trommel transportable over ground surfaces. Therefore, no combination of Kuhmonen and Jenkins discloses or suggests all the elements of claim 36. For at least this reason, claim 36 is not obvious over Kuhmonen in view of Jenkins, and is in condition for allowance. Furthermore, claims 37-40 depend from claim 36 and include all the elements of claim 36, and are therefore not obvious over Kuhmonen in view of Jenkins, and are thus also in condition for allowance.

Claims 41 and 42 have at least some of the same limitations as claim 36, previously traversed, specifically that the deployable conveyor has (1) first and second relatively moveable elongate components, and (2) is moveable relative to the chassis about two angularly displaced intersecting axes, among other further limitations.

Applicant respectfully traverses rejection of claims 41 and 42 as Kuhmonen and Jenkins fail to teach all of their claim elements. At least the above cited two aspects of claim 36 have been traversed in at least traversal of claims 26 and 36 herein; applicant avoids further redundancy and respectfully

relies on prior remarks. Therefore, no combination of Kuhmonen and Jenkins discloses or suggests all the elements of claims 41 and 42. For at least this reason, claims 41 and 42 are not obvious over Kuhmonen in view of Jenkins, and are in condition for allowance. Furthermore, claims 43-49 depend from claim 42 and include all the elements of claim 42, and are therefore not obvious over Kuhmonen in view of Jenkins, and are thus also in condition for allowance.

Claims 50 and 51 recite at least a stockpiling conveyor having a lower part and an upper part, wherein the lower part is pivotally attached to the chassis and the upper part is pivotally attached to the lower part. As discussed in traversal of claim 1, no combination of Kuhmonen or Jenkins teaches or suggests at least this limitation. Without discussing the various other limitations, for at least this reason, no combination of Kuhmonen and Jenkins contain all the elements of claims 50 and 51. For at least this reason, claims 50 and 51 are not obvious over Kuhmonen in view of Jenkins, and are in condition for allowance.

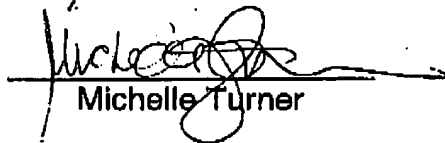
Furthermore, a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) will be submitted in the next two weeks after the inventor returns to North America.

Applicant believes that this application is now in condition for allowance, in view of the above remarks. Accordingly, applicant respectfully requests that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way

advance prosecution of the application, please contact the undersigned attorney of record.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being faxed to (703) 703-872-9326: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on October 21, 2004.


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